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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
The Honorable Stanley A. Bastian

8 United States of America,

9 Plaintiff,

No. 4:19-CR-6017-SAB

10 v.

11 Jeremy Jay Gullett,

12 Defendant.  
13

**Motion to Reopen or Reconsider  
Motion to Suppress, Supplemental  
Brief in Support of Motion to  
Suppress**

14 Mr. Gullett previously moved to suppress all evidence seized during his stop and  
15 arrest (and subsequent search of the vehicle he was in) which occurred on February 22,  
16 2019. *See* ECF 26. After the motion was fully briefed, the Court held a hearing on the  
17 motion. *See* ECF 44. The parties presented argument on six stipulated facts for  
18 approximately 45 minutes before taking testimony from three police officers. *See id.* The  
19 Court took the motion under advisement and indicated that it would give the parties an  
20 opportunity to file supplemental briefing to address issues and questions raised at the  
21 hearing. *See id.* Specifically, the Court indicated that Mr. Gullett could file any  
22 supplemental briefing by October 11, 2019, and the government could file a response  
23 by October 18, 2019. *See id.*  
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1 Despite its order permitting supplemental briefing, on October 11, 2019, the  
2 Court issued an order denying Mr. Gullett's motion. *See* ECF 45. The Court's order says  
3 nothing about the permitted supplemental briefing, i.e. that the Court had reconsidered  
4 the matter and no longer found supplemental briefing necessary. *See id.* Given that the  
5 Court's order was entered less than an hour prior to counsel's filing of the instant  
6 pleading, counsel will not address the conclusions set forth in the Court's order.  
7

8 Mr. Gullett hereby moves the Court to reopen his Motion to Suppress and to  
9 Reconsider its ruling on that motion. Pursuant to this Court's directive at his October  
10 4 hearing, Mr. Gullett files the instant brief to address some of the issues that the Court  
11 indicated the parties should address in supplemental briefing. For the reasons presented  
12 herein and in his prior briefing, this Court should suppress all evidence seized from the  
13 Saturn Ion as a result of the February 22, 2019 incident.  
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### 16 Argument

17 **1. The officers had no authority to search the Saturn Ion based solely on**  
18 **arrested Mr. Gullett on his valid arrest warrant.**

19 At the outset of the hearing on the motion to suppress, the government  
20 presented six stipulated facts to the Court. *See* ECF 44. Those facts are: 1) Mr. Gullett  
21 had a valid arrest warrant; 2) the officers observed and recognized Mr. Gullett; 3) the  
22 officers arrested Mr. Gullett pursuant to this warrant; 4) the officers called for a K9 to  
23 sniff the Saturn Ion; 5) after the K9 alerted, the officers applied for and obtained a  
24 search warrant for the Saturn Ion; and 6) the Saturn Ion was searched pursuant to the  
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1 search warrant. *See id.* The Court heard argument from the parties about whether any  
2 further factual testimony was necessary. As argued at the hearing and in his Reply (*see*  
3 ECF 38 at pp. 7-12), it is beyond question that the officers did not have authority to  
4 search the Saturn Ion after arresting Mr. Gullett on his valid arrest warrant.  
5

6 The reason this question is settled is because the Supreme Court has answered  
7 it. In *Arizona v. Gant*, the Supreme Court held that police cannot search a vehicle where  
8 an arrestee cannot access its interior (negating safety concerns) and there is no reason  
9 to believe evidence of the offense of arrest may be found in the vehicle. *See* 556 U.S.  
10 332, 335, 343-44 (2009). The defendant in *Gant* had a valid arrest warrant and police  
11 had also observed him commit a new offense of driving with a suspended license. The  
12 Court held their search of his car after arresting him, though, was unlawful.  
13  
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15 The Court's analysis in *Gant* applies easily and clearly to Mr. Gullett's case. As in  
16 *Gant*, the officers knew Mr. Gullett had an active warrant and they arrested him  
17 pursuant to that warrant. Both officers involved in initially arresting Mr. Gullett testified  
18 they did not see him commit any criminal or suspicious actions, and his arrest was based  
19 entirely on the warrant. They secured Mr. Gullett in handcuffs in their police vehicle.  
20 There was no basis whatsoever for them to search the Saturn Ion for evidence because  
21 there could be no relevant evidence in the vehicle related to his arrest warrant.  
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1 The Supreme Court's ruling in *Gant* controls this question, and the answer is  
2 clear: the police did not have authority to search the Saturn Ion at the time they called  
3 for a K9 sniff.  
4

5 **2. The officers had no authority to conduct a K9 sniff of the Saturn Ion**  
6 **because it was parked on private property that they did not have either**  
7 **consent or probable cause to enter, making this K9 sniff a search,**  
8 **distinguishing permissible K9 sniffs on publicly accessible property.**

9 Before taking testimony from the three witnesses present in the courtroom, the  
10 Court presented the parties with a question: did the police need a reason (i.e. some  
11 authority) to conduct a K9 sniff in the motel parking lot? Mr. Gullett's position was yes,  
12 the police did need some reason because the motel's parking lot is private (contrary to  
13 the government's assertion in its Response) and they otherwise had no authority to  
14 search the vehicle. The government's position was no, the police did not need any  
15 authority because a K9 sniff is not a search, citing the Supreme Court's ruling in *Illinois*  
16 *v. Caballes*, 543 U.S. 405 (2005). The Court must resolve this question.  
17

18 The Supreme Court has held that a K9 sniff is, in most contexts, not a "search"  
19 within the meaning of the Fourth Amendment. To counsel's knowledge, the Supreme  
20 Court's first definitive stance on this issue came in *United States v. Place*, 462 U.S. 696  
21 (1983). The Court held that a K9 sniff "discloses only the presence or absence of  
22 narcotics" making it "*sui generis*" from other investigative tools. *Place*, 462 U.S. at 707.  
23 The Court thus found that a K9 sniff of the defendant's luggage, "**which was located**  
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1 **in a public place**” (an airport), was not a “search” under the Fourth Amendment. *Id.*  
2 (emphasis added).

3  
4 More recently, the Supreme Court issued two rulings that further clarify the  
5 permissibility of K9 sniffs. First, in *Illinois v. Caballes*, the Court held that police officers  
6 did not need reasonable suspicion to conduct a K9 sniff during an otherwise legitimate  
7 traffic stop. *See* 543 U.S. 405, 407-08. Specifically, the Court reasoned there is no  
8 legitimate privacy interest in possessing contraband; thus, because a K9 sniff only  
9 reveals the presence of contraband,<sup>1</sup> it does not affect a privacy interest and does not  
10 implicate the Fourth Amendment. *See id.* at 408-10. Two dissenting justices noted the  
11 potential fallout of the majority’s ruling—“every traffic stop could become an occasion  
12 to call in the dogs, to the distress and embarrassment of the law-abiding population.”  
13 *Id.* at 422 (Ginsburg, J., dissenting). As discussed below, this concern actually  
14 understates the potential impact of the government’s position in Mr. Gullett’s case.

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17 The second recent Supreme Court ruling on K9 sniffs came in *Florida v. Jardines*,  
18 569 U.S. 1 (2013). Here, the Supreme Court found that a K9 sniff on the front porch  
19 of a home was a search within the meaning of the Fourth Amendment. *See id.* at 11-12.  
20 The Court rejected the state’s argument that *Place* and *Caballes* “by definition cannot  
21 implicate any legitimate privacy interest,” holding that private property remained  
22 protected under the Fourth Amendment even against K9 sniffs. *See id.* The Court’s  
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25 <sup>1</sup> One justice disputed this premise, finding “[t]he infallible dog ... is a creature of legal fiction.” *Illinois v. Caballes*, 543 U.S. 405, 411 (2005) (Souter, J., dissenting).

1 ruling rested on the fact that the front porch was clearly the curtilage of the home,  
2 distinguishing it from “open fields” that may be searched even if privately owned. *See*  
3 *id.* at 6-7.

4  
5 The combined holdings of *Place*, *Caballes*, and *Jardines* are that a K9 sniff is not a  
6 search within the meaning of the Fourth Amendment, except where it occurs on  
7 protected private property. Circuit case law appears to agree with these general  
8 principles.<sup>2</sup> The Fifth Circuit summarized it well in *United States v. Beene*, finding that a  
9 K9 sniff “may nevertheless be an unwarranted search when it involves an intrusion into  
10 a constitutionally protected area.” 818 F.3d 157, 162 (5th Cir. 2016). But, “a dog sniff  
11 is not a search in a public place.” *Id.* at 163. In *Beene*, the Court ultimately upheld a K9  
12 sniff occurring in a driveway of a home because it was not within the home’s curtilage  
13 and instead was treated as an “open field” and there is no reasonable expectation of  
14 privacy in odors in plain view (or rather, plain smell) in an open field. *See id.*

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17 Given these holdings, an undisputed fact takes on paramount importance: the  
18 Motel 6 parking lot is a private parking lot and any unauthorized vehicles may be towed,  
19 as signs at both entrances make clear. *See* ECF 38-1. Officers Schwartz and Grant’s  
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21  
22 <sup>2</sup> *See, e.g., United States v. Beene*, 818 F.3d 157, 162-63 (5th Cir. 2016) (“A sniff may  
23 nevertheless be an unwarranted search when it involves an intrusion into a  
24 constitutionally protected area.... [But,] a dog sniff is not a search in a public place....”);  
25 *United States v. Dyson*, 639 F.3d 230, 232 (6th Cir. 2011) (holding that reasonable  
suspicion was not required to perform a K9 sniff on a vehicle “on publicly accessible  
property,” in this case a gas station parking lot); and *United States v. Grogg*, 534 F.3d 807,  
810-11 (7th Cir. 2008) (noting that a K9 sniff **in a public place** is not a search”) (emphasis added).

1 testimony made clear they were not called out to the motel by staff and did not  
2 otherwise have consent to be on the property. Though the parking lot is not enclosed  
3 by a gate or fence, the signs posted at the two entrances make clear that unauthorized  
4 entrance is not permitted. This parking lot is not an open field. It is private property  
5 deserving of Fourth Amendment protections against unreasonable searches. Therefore,  
6 the officers needed some reason to conduct the K9 sniff. They had none, making their  
7 actions unlawful.  
8  
9

10 **3. Mr. Gullett has standing to object to the K9 sniff despite not having been**  
11 **a registered guest at the Motel 6.**

12 During the preliminary arguments, after discussing whether the police needed  
13 some authority to conduct a K9 sniff on the motel property, the government suggested  
14 that Mr. Gullett may lack standing to raise that issue. Anticipating that the government  
15 will expand on that argument in its own supplemental briefing, Mr. Gullett will argue  
16 herein why he has standing to object to the unlawful K9 sniff.  
17

18 A court generally must answer two questions to determine whether an  
19 unconstitutional search has occurred. First, does the individual contesting the search  
20 have a subjective expectation of privacy? Second, was that individual's expectation of  
21 privacy one that society would recognize as objectively reasonable? *Smith v. Maryland*,  
22 442 U.S. 735, 740 (1979). Applied to this case, those questions would present as follows:  
23 did Mr. Gullett have an expectation of privacy while parked at the Motel 6 parking lot,  
24 and is such an expectation objectively reasonable?  
25

1 The motel parking lot was private. Signs at both entrances confirmed this. There  
2 is no record of any regular monitoring or surveillance of the lot by police officers. There  
3 is no warning that vehicles parking in the lot are subject to searches. Mr. Gullett  
4 certainly would not expect his vehicle to be subject to a K9 sniff on private property. It  
5 is objectively reasonable for Mr. Gullett to expect his vehicle would be safe from such  
6 a search. Therefore, this Court should find that Mr. Gullett has standing to challenge  
7 the officers' unconstitutional actions.  
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### 10 CONCLUSION

11 For all the reasons set forth herein and in his prior pleadings, this Court should  
12 suppress all evidence seized from the Saturn Ion.  
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15 Dated: October 11, 2019.  
16

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**Certificate of Service**

I hereby certify that on October 11, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following: Benjamin D. Seal, Assistant United States Attorney.

s/ Paul E. Shelton

Paul E. Shelton